

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number NC28244CIP

(filed with the Notice of Appeal)

Application Number 09/659,416

Filed September 11, 2000

First Named Inventor Arto Astala

Art Unit 2143

Examiner Nguyen, Phuoc H.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

Respectfully submitted,



Chad L. Thorson

Registration No. 55,675

Date August 1, 2006

Customer No. 00826

ALSTON & BIRD LLP

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Charlotte Office (704) 444-1000

Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON AUGUST 1, 2006.

Attachment
Reasons for Requesting Pre-Appeal Brief Request For Review

I. The independent claims are not anticipated by the cited reference

Independent claims 47, 49 and 70-75 stand rejected solely under § 102(b) as being anticipated by Guarneri et al. (U.S. Patent No. 5,724,345. hereinafter “Guarneri”). Applicant respectfully disagrees with this analysis and requests that the rejections be reversed.

Independent claim 47 is drawn to a method for activating a configuration tool in a configuration server for managing a configurable controlling function of a terminal system. The method includes an initial operation of receiving a configuration upgrade message with the configuration server from a source of a software upgrade. As described by the present application, the configuration server may be an operation and maintenance (O&M) server. Independent claims 70, 72 and 74 include comparable recitations to those of independent claim 47 in terms of a system, a configuration server unit and a computer program product, respectively. Meanwhile, independent claim 49 is drawn to a method to activate the configuration tool in a configuration server for managing a configurable controlling function of a browser and includes the initial operation of receiving an upgrade message in the configuration server from a service provider that provides an end service product. The end service product is then received and saved in a database. As shown in Figure 9a, for example, the database may be a memory device associated with configuration server, e.g., the O&M server, that communicates with the service provider via the Internet. The upgrade information is saved in a database associated with the configuration server, such as the O&M server. Independent claims 71, 73 and 75 include comparable recitations to those of independent claim 49 in terms of a system, a configuration server unit and a computer program product, respectively. As recited by independent claims, a plurality of users requiring the software upgrade are identified (independent claims 47, 70, 72 and 74) or a plurality of users having a contract that requires delivery of the end service product are identified (independent claims 49, 71, 73 and 75). After the plurality of users that require the software upgrade have been identified (independent claims 47, 70, 72 and 74), the software upgrade is provided to respective terminal servers associated with the plurality of users identified to require the software update for subsequent distribution by the terminal servers to respective terminals of users identified to require the software upgrade. Similarly, after identifying the plurality of users that require delivery of the end service product

(independent claims 49, 71, 73 and 75), product information relating to the end service product is provided to respective terminal servers associated with the plurality of users that were identified to have contracts requiring delivery of the end service product for subsequent distribution by the terminal servers to respective terminals of users identified to have contracts requiring delivery of the end service product. Thus, as described by the present application, the software upgrades or end service product are not transferred directly to the users' terminals from the configuration server but, instead, the software upgrades or end service product are transferred to the terminal servers associated with the users' terminals that require the respective software upgrade or end service product. Accordingly, the terminals may remain thin with the terminal server associated with the terminals performing at least some of the communications and processing functions.

Guarneri describes a system and method for electronically distributing software. In this regard, Guarneri describes the initial transmission of data to an earth orbiting satellite. The satellite then retransmits the data over a wide geographical area to one or more receiving locations, each having a small satellite dish for receiving the retransmitted data. A work station in the switching office of each receiving location processes the data prior to further retransmitting the data to various subscriber computers. Prior to further retransmission to the various subscriber computers, however, all of the data is again broadcast; first to the earth orbiting satellite and then to the receiving locations. As such, errors in the data that were detected during the processing of the data at the receiving location can be corrected based upon the second broadcast of the data.

Notably, however, Guarneri does not teach or suggest identifying a plurality of users requiring at least partial software upgrade or having a contract requiring delivery of the end service product, as recited by the claimed invention. Moreover, Guarneri does not teach or suggest "thereafter providing the at least partial software upgrade to respective terminal servers associated with the plurality of users identified to require the at least partial software upgrade", as further recited by the claimed invention. Instead, Guarneri is designed to widely distribute software or data without any initial identification of the users requiring the software or data. By initially identifying the users that require the software or data and then targeting the distribution to those users as in the claimed invention, the communications bandwidth as well as the underlying transmission and reception resources can be advantageously conserved relative to a wide broadcast as described by Guarneri.

Applicants note that the final Office Action asserts that the recited features above are “logically” disclosed by virtue of Guarneri’s disclosure at col. 4, lines 54-61 and col. 12, lines 13-68. However, col. 4, lines 54-61 merely refers to sending small changes or “patches” to a switching office, while major updates may take many hours to be sent. As such, it is unclear to the Applicants how the cited passage has any logical relationship to the assertion made by the final Office Action.

Meanwhile, col. 12, lines 13-68 describes FIGS. 19 and 20 of Guarneri. In this regard, for example, col. 12, lines 16-18 disclose that software generic retrofit services are “distributed from a central site to all of the switching centers”, which is contrary to the claimed invention in which only those respective terminal servers associated with the plurality of users that were identified to require the software upgrade or have contracts requiring delivery of the end service product receive the software upgrade or end service product, respectively. As such, the cited passage teaches the opposite of that which is claimed.

The final Office Action also states that “the transmitting architecture of the reference for software upgrade or addition of new software module to the subscribers is most cost-effective which reducing the amount of data being transmitted to all the subscribers, instead the source which can be the service provider only transmits to *certain* regional database server with *certain* subscribers (emphasis added). Thus, the source must be know ahead which regional database server should receive transmitted data which merely based on the subscribers” (final Office Action page 2). Applicant has reviewed the cited passage and cannot find any instance where Guarneri discloses transmission only to certain regional database servers. To the contrary, the cited passage clearly discusses the advantages of broadcast distribution, for example, of a newspaper, “to many regional servers across the country” (col. 12, lines 43-46). Additionally, Guarneri describes that, as a further example, data is retransmitted by satellite “to a plurality of regional servers” (col. 12, lines 53-55). Accordingly, Guarneri never teaches or suggests only transmitting to certain regional database servers as alleged in the final Office Action. Furthermore, Guarneri then explains that “subscribers of the information in any given region will be able to access a regional database thus reducing the cost of network infrastructure for providing information to mass markets” (col. 12, lines 47-50). Accordingly, the subscribers can access the newspaper at the regional database and do not themselves receive any software upgrade or end product service based on a determination that respective terminal servers

associated with the plurality of users were identified to require the software upgrade or have contracts requiring delivery of the end service product as recited in the claimed invention.

Accordingly, the passages cited by the final Office Action, in particular, and all of Guarneri, in general, fail to teach or suggest the claimed features as recited above. Moreover, the passages cited by the final Office Action, in fact, teach the opposite of both that which is claimed and that which is asserted in the final Office Action. Thus, Applicant respectfully requests that the rejections of the independent claims be reversed.

II. The dependent claims are patentable over the cited references

Dependent claims 48 and 66-69 stand rejected as being anticipated by Guarneri. Dependent claim 50 stands rejected as being unpatentable over Guarneri in view of U.S. Patent No. 6,141,681 to Kyle. For each of the reasons described above, the independent claims are patentable over Guarneri. The independent claims are also patentable over Kyle which also fails to teach or suggest the above recited features and is not cited as such. Thus, the independent claims are patentable over Guarneri and Kyle, either alone or in combination, at least due to the recitation of the features described above. As such, dependent claims 48, 50 and 66-69, which depend from respective ones of the independent claims and thereby include all of the recitations of their respective independent claims, are also patentable over the cited references, either alone or in combination, at least by virtue of their dependency.

However, yet further reasons for patentability of at least some of the dependent claims exist. For example, claims 66 and 67, which depend from independent claim 47, recite, *inter alia*, identifying or determining any terminal servers, following provision of the at least partial software upgrade (claim 66) or activation of a terminal associated with the terminal server (claim 67), to which the at least partial software upgrade has not yet been transferred. The final Office Action asserts that such feature is “logically” disclosed by Guarneri at col. 6, lines 12-23, which describes performing retransmissions of broadcast data to correct errors. However, as disclosed at col. 6, lines 20-23, Guarneri’s only specific disclosure as to how this may be accomplished relates to broadcasting the same blocks from beginning to end after a predetermined time interval for a predetermined number of times. While each terminal may make a determination regarding errors, there is no disclosure that terminals detecting errors are identified. As such, the cited passage of Guarneri, and indeed all of Guarneri, fails to teach or suggest identifying or

determining any terminal servers to which the at least partial software upgrade has not yet been transferred as claimed in claims 66 and 67. Furthermore, dependent claims 68 and 69 include comparable recitations to those set forth by dependent claims 66 and 67, respectively, with a dependence from independent claim 49 as apposed to independent claim 47.

Additionally, the final Office Action cites Kyle with regard to dependent claim 50 which recites that a virus search is made of the end service prior to conveying the product to the terminal server. In contrast to the method of dependent claim 50 in which a virus search is made prior to the conveyance of the end service product, Kyle describes the performance of a virus check following the transmission of the data packet. Specifically, Kyle describes the performance of a virus check by a local computer that receives a data package as apposed to performance of the virus check at the host computer which transmits the package (col. 6, lines 12-16). The Office Action admits that Guarneri fails to teach or suggest the above recited feature. Thus, neither Kyle nor Guarneri teach or suggest the performance of a virus search on the end service product that is transferred to a terminal server prior to conveyance of the end service product to the terminal server as recited by dependent claim 50.

Accordingly, for all the reasons described above, Applicant respectfully requests that the rejections of the dependent claims be reversed.